No. 926

In the Supreme Court of the United States

OCTOBER TERM, 1943

UNITED STATES OF AMERICA, EX REL. LOUIS JACOBS, PETITIONER

v.

JOHN J. BALL, UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF MICHIGAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Argument	4
Conclusion	8
Appendix	9

CITATIONS

Cases:	
Bowers v. *Dishong*, 103 F. (2d) 464	6
Bragg v. *Huff*, 118 F. (2d) 1006	6
Chandler v. *Johnston*, 133 F. (2d) 139	6, 7
Clark v. *Surprenant*, 94 F. (2d) 969	7
Douglas v. *King*, 110 F. (2d) 911	7
King v. *United States*, 98 F. (2d) 291	6
Morgan v. *Aderhold*, 73 F. (2d) 171	6
Story v. *Rives*, 97 F. (2d) 182, certiorari denied, 305 U. S. 595	6
United States ex rel. Nicholson v. *Dillard*, 102 F. (2d) 94	6
United States ex rel. Rowe v. *Nicholson*, 78 F. (2d) 468, certiorari denied, 296 U. S. 573	6
Wipf v. King, 131 F. (2d) 33	6
Zerbst v. *Kidwell*, 304 U. S. 359	5
Statutes:	
Act of June 25, 1910, 36 Stat. 819, as amended, 18 U. S. C. 717, 719 and 723:	
Sec. 4	11
Sec. 6	11
Sec. 10	6, 12
Act of May 13, 1930, sec. 3, 46 Stat. 272, as amended by the Act of June 29, 1940, 54 Stat. 692, 18 U. S. C. 723c	11
Act of May 27, 1930, sec. 8, 46 Stat. 391, 18 U. S. C. 744h	4, 10
Act of June 29, 1932, 47 Stat. 381, 18 U. S. C. 716b:	
Sec. 4	5, 10
Sec. 5	7
R. S. §§ 5543, 5544, as amended, 18 U. S. C. 710	4, 9
Miscellaneous:	
H. Rep. 960, 72nd Cong., 1st sess	5
S. Rep. 803, 72nd Cong., 1st sess	5

587251—44

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 926

UNITED STATES OF AMERICA, EX REL. LOUIS JACOBS, PETITIONER

v.

JOHN J. BARC, UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF MICHIGAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 30–33) has not yet been reported.

JURISDICTION

The judgment of the circuit court of appeals was entered March 27, 1944 (R. 29). The petition for a writ of certiorari was filed April 24, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, upon the release of a prisoner who has served the term for which he was sentenced, less good conduct deductions, the Board of Parole may impose parole conditions upon him for the remaining period of his full sentence, and, pursuant to a warrant issued during the term of the sentence upon reliable information that he has violated those conditions, retake him into custody to determine whether his conditional release should be revoked.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra,* pp. 9–12.

STATEMENT

On November 9, 1933, petitioner was convicted in the United States District Court for the Eastern District of Michigan on a counterfeiting charge and was sentenced to imprisonment for six years (R. 1, 13). On November 2, 1937, having earned 24 months' statutory good time and industrial credits, he was conditionally released from confinement (R. 10, 13). At the time of his release petitioner was informed of the conditions of his release and he certified that "I understand the above conditions which have been read and explained to me and under which I am being released" (R. 11–13). In August 1939, prior to the expiration of his full sentence, petitioner was arrested on a state charge of armed

robbery of which he subsequently was acquitted; on January 3, 1940, he was rearrested on a state charge of carrying concealed weapons and he was convicted and sentenced to imprisonment for an indeterminate term of from two and one-half to five years (R. 1–2, 13). In the meantime, however, the Board of Parole had been informed that petitioner had submitted false reports to his parole officer, associated with persons of bad reputation, and allegedly engaged in armed robbery, in violation of the parole conditions imposed upon him (R. 23–24). Accordingly, on November 7, 1939, prior to the expiration of the full term of petitioner's sentence, a member of the Board of Parole issued a warrant for the retaking of petitioner (R. 22). The warrant was received by respondent on November 13, 1939, and was executed by him on June 3, 1943, when petitioner was released from imprisonment under the state sentence (R. 2–3, 7–9, 23).

On June 4, 1943, petitioner filed in the United States District Court for the Eastern District of Michigan a petition for a writ of habeas corpus (R. 1–4) in which he contended that the full term of his federal sentence was completely served when he was released from imprisonment in November 1937, that the conditions of release imposed on him were therefore of no effect, and that respondent thus was without authority to retake and hold him for action by the Board of Parole. The writ

issued on June 4, 1943 (R. 5), and on June 7 respondent filed a return (R. 7–9) in which he alleged that petitioner was properly in his custody by virtue of the retaking warrant of the Board of Parole issued pursuant to its authority under Public Act No. 210, 72nd Congress (18 U. S. C. 716b, *infra,* p. 10) and that petitioner was being held pursuant to the procedure prescribed by 18 U. S. C. 719, *infra,* pp. 11–12.

On July 1, 1943, the district court entered an order dismissing the writ and remanding petitioner to respondent's custody (R. 17–18; see also R. 13–17). Upon appeal to the Circuit Court of Appeals for the Sixth Circuit the order was affirmed (R. 29–33).

ARGUMENT

Petitioner contends, in substance, that once the good time allowances granted by 18 U. S. C. 710 and 744h (*infra,* pp. 9–10) have been earned, they are irrevocable and, in effect, operate to reduce the total sentence by the amount of the earned good time allowances. Applying this doctrine to his case, he urges that since he earned two years' good time allowances, he was required to serve only four years of his six-year sentence, and that, having done so, the Government could not impose conditions on his release or recommit him for violation of those conditions (Pet. 7–8, 9–11, 22–26).

Prior to the Act of June 29, 1932, it was the view of the Government that the good time allowance statutes operated as petitioner here urges. For that reason the then Attorney General recommended a bill to Congress, which was passed as the Act of June 29, 1932, providing, *inter alia,* for the extension of the parole laws to permit parole supervision of prisoners until the termination of their maximum sentences. See House Report No. 960 and Senate Report No. 803, 72d Congress, 1st Session. Section 4 of that Act, 18 U. S. C. 716b (*infra,* p. 10), provides that a prisoner who shall have served his term, less deductions allowed for good conduct, "shall upon release be treated as if released on parole and shall be subject to all provisions of law relating to the parole of United States prisoners" until the expiration of the maximum term specified in his sentence. As shown in the Statement (*supra,* p. 2), pursuant to the requirements of this section, petitioner was released from imprisonment subject to parole supervision.[1] Before his maximum term had expired and upon evidence that he had violated the conditions imposed upon him (R. 11–13, 23–24), a warrant was issued for his retaking for

[1] In *Zerbst* v. *Kidwell*, 304 U. S. 359, 360, this Court, in describing defendants released under circumstances identical to those under which petitioner was released, said, "Some were released with credit for good conduct but are treated as on parole until their maximum terms have expired."

further action by the Board of Parole (R. 22), in accordance with 18 U. S. C. 717 and 719 (*infra*, p. 11), and he is presently held by respondent awaiting action by the Board of Parole (R. 8–9). Plainly, since he is held pursuant to the applicable statutory commands, there is no basis for habeas corpus. *Chandler* v. *Johnston*, 133 F. (2d) 139 (C. C. A. 9); *Wipf* v. *King*, 131 F. (2d) 33 (C. C. A. 8); *Bragg* v. *Huff*, 118 F. (2d) 1006 (C. C. A. 4); *Bowers* v. *Dishong*, 103 F. (2d) 464 (C. C. A. 5); *United States ex rel. Nicholson* v. *Dillard*, 102 F. (2d) 94 (C. C. A. 4); *King* v. *United States*, 98 F. (2d) 291 (App. D. C.); *Story* v. *Rives*, 97 F. (2d) 182, 184 (App. D. C.), certiorari denied, 305 U. S. 595; *United States ex rel. Rowe* v. *Nicholson*, 78 F. (2d) 468 (C. C. A. 4), certiorari denied, 296 U. S. 573.

Petitioner urges (Pet. 24) that Section 10 of the Parole Act of June 25, 1910, 18 U. S. C. 723 (*infra*, p. 12), precludes the conclusion because it provides that nothing in the Act shall "impair or revoke such good time allowance as is or may hereafter be provided by law." This has been interpreted as meaning only that the plan of good time allowances was not superseded by the parole program. *Morgan* v. *Aderhold*, 73 F. (2d) 171 (C. C. A. 5). In any event, however, even if Section 10 is construed as petitioner

contends, it must be held to have been repealed by the Act of June 29, 1932, extending the provisions of the Parole Act to prisoners released by virtue of good conduct allowances and repealing "all laws and parts of laws in conflict herewith" (47 Stat. 381, § 5).[2]

---

[2] *Clark* v. *Surprenant*, 94 F. (2d) 969 (C. C. A. 9), and *Douglas* v. *King*, 110 F. (2d) 911 (C. C. A. 8), which petitioner cites (Pet. 10–11) as being in conflict with the decisions cited *supra*, p. 6, in support of respondent's position, do not in any sense indicate a conflict of decisions or support petitioner's position. In the *Clark* case the court upheld the issuance of the writ of habeas corpus where it was shown that the petitioner was not arrested for violation of his parole conditions until long after his maximum term had expired, and that he had not in fact violated the conditions imposed upon him. In the *Douglas* case the court held that a prisoner confined in the Medical Center for Federal Prisoners was not entitled to good time allowances by virtue of 18 U. S. C. 876. The court's dictum that in respect of other prisoners a good time allowance, when earned, is a matter of right which may be invoked on habeas corpus, is applicable to the situation of a prisoner who has not been released conditionally upon completion of his sentence less his good time allowances. It has no application here. *Chandler* v. *Johnston*, *supra*.

CONCLUSION

Petitioner is properly held in custody for the action of the Board of Parole. The decision below is therefore correct and there is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.
TOM C. CLARK,
Assistant Attorney General.
ROBERT S. ERDAHL,
Special Assistant to the Attorney General.
IRVING S. SHAPIRO,
Attorney.

MAY 1944.